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**VIA ECF**  
April 25, 2022

Hon. Barbara Moses  
United States Magistrate Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Poly-America LP v. API Industries, Inc.*  
No. 21-CV-8195 (JSR)(BCM)

Dear Judge Moses,

We represent defendant API Industries, Inc. ("API") in the above action. This letter is to request leave to file a sur-reply, not to exceed five pages, on the pending motion to dismiss.

As the Court is aware, Poly-America moved to dismiss API's counterclaims on the basis, *inter alia*, of lack of subject matter jurisdiction. (Dkt. 48, 49) API filed its opposition (Dkt. 52, 53) which relied, in part, on Poly-America's responses to requests for admission, in which it denied that its trade dress at issue has not achieved secondary meaning.

On April 19th, Poly-America filed its reply on the motion. (Dkt. 54) Mere minutes before that filing, Poly-America served amended responses to the requests for admission (Dkt. 54-1), and then relied upon that amendment in its reply to argue in support of its contention that the Court lacks subject matter jurisdiction over the Counterclaims.

API has had no opportunity to address this last-minute change and its impact on the Court's jurisdiction. We do not agree that the change deprives the Court of jurisdiction. Accordingly, we request leave to file a sur-reply, not to exceed five (5) pages.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Efrem Schwalb".

Efrem Schwalb  
Counsel for Defendant  
API Industries, Inc.